

March 23, 1950

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ARIZONA ATTORNEY GENERAL

Mr. P. A. Isley  
Dairy Commissioner  
State Dairy Commission  
State House  
Phoenix, Arizona

Attention: H. J. Shouse

Dear Sir:

Replying to your questions of March 8, 1950, you are advised that it appears to us that questions 1 and 2 can be taken care of with one answer. Your questions are:

- "1. Is the process of pasteurization of raw milk a manufacturing operation?
2. Is the process of homogenization of pasteurized milk a manufacturing operation?"

"While it has been said that the word 'manufacture' has a well ascertained and defined meaning, it is not an easy term to define and is not susceptible of an accurate definition that is all-embracing or all-exclusive, but is susceptible of many applications and many meanings. \* \* \* Distinct and apart from its common or ordinary meanings, 'manufacture' may have a broad, comprehensive, generic, or general meaning, or a narrow, limited or particular meaning." (Emphasis supplied) 55 C.J.S., p. 667.

In the case of Standard Tailoring Co. v. City of Louisville, 153 S.W. 764 (55 C.J.S., p. 668) the court said:

"Where construction of ordinances and statutes is involved, especially in cases involving licenses and exemption cases, the courts have on occasion found it necessary, in carrying out the legislative intent in the use of the word, to limit materially the scope of the general definitions."

We believe that the proper method of interpreting the statutes regarding the word "manufacture" in this instance should be to give it a limited interpretation.

"It has been well stated that it is sometimes difficult to determine with legal exactness what is or what is not manufacturing. \* \* \* In determining what constitutes manufacture there is no hard and fast rule which can be applied generally. Each case must be decided under its own facts, having regard for the sense in which the term may be used in the particular instance, and the intent or purpose to be accomplished." C.J.S. 55, p. 680.

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The intent and purpose of determining whether these processes are manufacturing processes, or not, is for licensing or tax purposes. In that regard we cite the case of Rieck-McJunkin Dairy et al v. School Dist. of Pittsburgh, 66 A. 2d, p. 295, wherein the court said:

"Pasteurization and homogenization of milk by milk companies before their re-sale of it as milk is a mere processing and not "manufacturing", within statute authorizing school districts of first class to impose a temporary mercantile license tax on persons engaged in certain occupations and businesses, but exempting persons engaged in manufacturing."

The case just quoted has briefed this subject in considerable detail and after taking into consideration decisions from practically every state in the Union, gave the decision just quoted. In this case, just quoted, the Dairy Co. contended that the pasteurization and or homogenization was a manufacturing process. They likewise quoted many authorities to sustain their contention; however, for tax purposes, as in our present case, the court ruled that the process in question was not a "manufacturing process". It is therefore our opinion that applying the Pennsylvania case to our question and our statutes for licensing purposes, pasteurization and or homogenization of milk is not a "manufacturing process", (within the meaning of 50-901 (g) A.C.A. 1939), for licensing purposes.

Your third question is:

"3. What license or licenses does a dairy require which produces part of its raw supply and purchases the balance from another source? This dairy

pasteurizes all of this milk and homogenizes part of it. A small amount of this milk is separated for cream and the balance is sold either as pasteurized or homogenized milk. No other products are manufactured in this dairy."

Sections 50-906, 50-907 and 50-908 A.C.A. 1939 as amended by Chapter 54 of the 1949 session laws, provides for licensing dairy products distributors, milk products manufacturers, and producer-distributor and producer manufacturer. Section 50-908 reads, the part which is pertinent to this question, as follows:

"A producer of market milk handling his own products exclusively and distributing the same, or manufacturing milk products therefrom and distributing the same, shall obtain a license as a dairy products distributor and as a manufacturer of milk products in the same manner as provided for a dairy products distributor and manufacturer of milk products. The application shall be accompanied by a fee of twenty-five dollars (\$25.00) which shall be the full fee for issuing a temporary license and the first regular license. Thereafter a license fee of twenty-five dollars (\$25.00) shall be paid annually with the application."

Section 50-906 provides for an individual to pay \$50.00 for an annual license as a dairy products distributor. It is our opinion, answering your question without taking into consideration the factual situation you present, that this dairyman who produces part and buys part of the milk that he distributes becomes a dairy products distributor and is required to pay \$50.00 under Section 50-906 for his license as a distributor and is not required to get a producer-distributor license as provided by Section 50-908. The same reasoning will apply regarding milk products manufacture. In other words, if a man produced part of his raw milk and bought additional milk and became a manufacturer and a distributor he would be required to get the licenses as provided for in 50-906 and 50-907, but would not be required to get a producer-distributor or producer-manufacturer license as provided by 50-908.

In answering your question specifically, the dairyman would only be required to secure one license (a distributor's license) that is provided by Section 50-906. In your factual situation you have made this statement:

"A small amount of this milk is  
separated for cream \* \* \*."

This brings into question whether or not the separating of this milk to get cream is a manufacturing process. Without repeating all that we have said in the beginning of this opinion regarding the definitions of a manufacturer and manufacturing, we desire that you look over that part again in further consideration of whether or not the separation of this milk to get cream is a manufacturing process. In this connection we may state that a true distributor of milk or milk products is a dealer or merchant in that he buys and re-sells. 38 C.J., p. 969, paragraph 12 (b) says:

"'Manufacturer' and 'dealer' are distinguishable terms. 'Dealer' is generally employed to designate a person engaged in the business of buying and selling merchandise or other personal property in the usual course of trade; 'manufacturer' designates one engaged in the business of making or producing articles for use or sale. So, becoming a dealer is not a necessary incident to the business of manufacturing."

A merchant sells to earn a profit. The manufacturer sells to take profit already earned. In some cases the question of whether one is a manufacturer is to be determined by what is his principal business and not by what are mere incidents to it.

From these definitions it is easy to see, in the process of separating milk to obtain cream, a manufacturing process. However there is the other definition that could apply as a process incidental to his business of distributor or merchant. The person who buys or produces raw milk and separates part of it to obtain cream and then sells the cream, as you state it, is not manufacturing, for licensing purposes. This process appears to us to be incidental to his business as a distributor of milk and milk products. We fail to find a case directly on this subject, but there are many cases which hold that similar operations are not manufacturing because of the specific circumstances surrounding the entire operations of the individual or concern. It seems to us that the better reasoning, therefore, would require us to say that the separating of this milk to obtain cream in the factual situation as you state it would not be a manufacturing process for licensing purposes, as contemplated by our dairy and dairy products code, Article 9, Chapter 50, A.C.A. 1939.

Very truly yours,

FRED O. WILSON  
Attorney General

CHAS. ROGERS  
Assistant Attorney General

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